IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

MACA.No. 1421 of 2007(F)

OPMV.528/1997 of ADDL.MOTOR ACCIDENT CLAIMS TRIBUNAL, ALAPPUZHA
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APPELLANT/3RD REPSONDENT:

THE NEW INDIA ASSURANCE COMPANY LTD.,
REP. BY THE DEPUTY MANAGER,
REGIONAL OFFICE, M.G.ROAD, KOCHI-11.

BY ADV. SRI.P.R.RAMACHANDRA MENON

RESPONDENTS/PETITIONER AND ADD.PETITIONER & RESPTS. 1 & 2
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1. DAMODARAN,
KOLLUVEEDU, AROOKUTTY PANCHAYATH WARD 6,
AROOKUTTY P.O., CHERTHALA TALUK.

2. REMANY, W/O DAMODARAN,
-DO-

3. SEBASTIAN, KOZHUPPALLITHARA,
PANAVALLY PANCHAYATH WARD NO.2,
THRICHATTUKULAM P.O., CHERTHALA.

4. IBRAHIM NAZEER, KOMBANAMURI,
AROOKUTTY VILLAGE.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 20/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B. KOSHY & V. Giri, JJ.

M.A.C.A.No. 1421 of 2007

Dated this the 20th day of August, 2007

Judgment

Koshy,J.

A 21 year old pillion rider of a motor cycle sustained fatal injuries in a motor accident on 4.2.1996. He died on 11.2.1996 after fighting for life. The tribunal awarded a total compensation of Rs.1,62,000/= with 6% interest. The tribunal also found that the accident occurred due to the negligent driving of the offending vehicle insured by the appellant insurance company. This appeal is filed only on the sole ground that there was only third party coverage and pillion rider of the motor cycle was not covered. Such a contention was not taken in the written statement filed by the insurance company. The tribunal also recorded as follows:

> "The 3rd respondent insurance company though filed written statement denying the insurance policy, from the copy of insurance policy produced it can be seen that there was valid insurance policy. Hence the learned counsel for the 3rd

> respondent fairly conceded at the time of hearing that there is valid insurance policy. The 3rd respondent also contended that the amount of compensation claimed is highly excessive."

Therefore, there was no contention that the pillion rider was not covered by the policy of insurance issued. The claim petition was filed in 1997. It is now settled law that when policy of insurance on the offending vehicle is admitted, it is for the insurance company to plead and prove that their liability is limited. Such a pleading was not taken. In fact, it was admitted before the tribunal that there is valid coverage. Quantum of compensation claimed alone was disputed. All claims were not accepted. The quantum of compensation awarded is not at all excessive as the quantum claimed was not awarded by the tribunal. Therefore, the appeal is dismissed.

J.B.KOSHY
JUDGE

V.GIRI
JUDGE

vaa

J.B. KOSHY AND
V.GIRI,JJ.

M.F.A.NO./99

Order

Dated:20th AUGUST, 2007